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Report of the Secretary-General on the activities of the Office of Internal Oversight Services

Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations

Report of the Office of Internal Oversight Services on the investigation conducted by the Investigations Task Force into fraud and corruption allegations at Pristina Airport

Note by the Secretary-General

The Secretary-General has the honour to transmit for the consideration of the General Assembly his comments on the report of the Office of Internal Oversight Services on the investigation conducted by the Investigations Task Force into fraud and corruption allegations at Pristina Airport.

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Comments of the Secretary-General on the report of the Office of Internal Oversight Services on the investigation conducted by the Investigations Task Force into fraud and corruption allegations at Pristina Airport

Summary

The present document provides additional information on the investigations conducted by the Investigations Task Force into allegations of fraud and corruption at Pristina Airport. It provides details of the structural and management reforms undertaken and completed by the United Nations Interim Administration Mission in Kosovo since 2003 to address issues of governance, fraud and corruption in publicly owned enterprises, including Pristina Airport. It also provides the status of implementation of the recommendations made in the report of the Office of Internal Oversight Services.

I. General comments

1. The report of the Office of Internal Oversight Services (OIOS) on Pristina Airport is based on investigations conducted by the Investigations Task Force into events and management decisions made during the period from 2000 to 2003. The report, however, does not reflect the institutional and structural changes implemented by the United Nations Interim Administration Mission in Kosovo (UNMIK) to improve the operations, management and supervision of the airport since the original Task Force reports were prepared. Those changes address directly the concerns expressed by OIOS. A summary of the measures taken by UNMIK to combat corruption and fraud in publicly owned enterprises is provided in section II of these comments.

2. Reforms of the governance structure of publicly owned enterprises initiated by UNMIK, and the implementation of a number of other initiatives designed to guard against corruption, fraud and mismanagement in Kosovo public institutions and enterprises have largely satisfied the recommendations made by OIOS in its report on Pristina Airport. Eight of the 11 OIOS recommendations have been implemented, substantial progress has been made in another, implementation is not considered feasible in another, and the final recommendation to submit the OIOS report to the Security Council is not agreed to, largely because consideration of the report is quite properly a matter for the General Assembly.

3. The Investigations Task Force recommended that nine individuals be referred to the UNMIK Department of Justice for further investigation of possible criminal actions. Those referrals were made. Six cases were dismissed, one trial involving airport staff is under way, and two cases remain under active investigation by the Department of Justice. Of the 74 recommendations made by the Investigations Task Force in all categories, 21 recommendations have been implemented in full; 26 recommendations are in the process of being implemented; and 27 recommendations relating to personnel who were not United Nations employees are being addressed by the Board of Directors of Pristina Airport. Among other actions, the Board recently announced the dismissal of two employees and issued warnings to five others.

II. The UNMIK record of reform of publicly owned enterprises

4. Upon its assumption of responsibility for the operations of the Kosovo Trust Agency and the publicly owned enterprise, which included Pristina Airport, in July 2002, Pillar IV of UNMIK commissioned financial, operations and management, and forensic, audits of these bodies by external auditors for the period 2000-2002. As OIOS correctly reports, the audits demonstrated a lack of attention to managerial, administrative and financial accountability at the airport and at other publicly owned enterprises during the period under audit. A package of more than 30 reform measures to improve the situation in terms of managerial and regulatory reform, administrative investigation and law enforcement was prepared and presented by an UNMIK team at a meeting involving UNMIK, OIOS and the European Anti-Fraud Office in Vienna in August 2003. The reform measures included the establishment of the Investigations Task Force, the need for change in corporate governance, the introduction of qualified professionals in top management

positions in publicly owned enterprises, tighter internal controls, changes in the regulatory environment, and more aggressive prosecution of financial crime.

5. Several actions followed in short order. The UNMIK Financial Investigations Unit was established early in 2003, focusing entirely on economic crime in UNMIK, in entities funded from the Kosovo consolidated budget and in publicly owned enterprises. In October 2003, the Office for the Oversight of Publicly-owned Enterprises was established under the direct control of the Special Representative of the Secretary-General, aimed at coordinating actions among the various UNMIK pillars and offices to ensure the progress of the reform package for publicly owned enterprises, which included not only management reforms and improvements to corporate governance but also law enforcement. Late in 2004, after initial attempts to use existing resources to address financial crime proved insufficient, specialized prosecution capabilities were added to the UNMIK Department of Justice.

6. UNMIK has introduced proper corporate governance structures in the publicly owned enterprises by establishing Boards of Directors for all publicly owned enterprises as part of an incorporation project. By "incorporating" the publicly owned enterprises, the old socialist-type enterprises are being transformed into joint stock companies pursuant to UNMIK Regulation 2001/6. The incorporated publicly owned enterprises are governed by their "internal rules", the by-laws, which specify the duties and responsibilities of shareholders and directors, and provide for the establishment of Management Committees to assist the Boards of Directors in the performance of their duties. It has to be emphasized that incorporation of publicly owned enterprises is normal practice in Western free market economies and the incorporation model used is consistent with best European practice and was implemented with the assistance and certification of international accountancy companies.

7. All major publicly owned enterprises have now been incorporated: PTK and the airport were legally transformed in June 2005 and KEK, Transco (spun out of KEK), UNMIK Railways and two district heating companies were registered as joint stock companies in December 2005. It is expected that all the restructured water and waste utilities companies will become joint stock companies by the end of 2006.

8. Through incorporation, capacity-building has become more transparent, through the need for proper management reporting to the Board, the appointment of a company secretary and legal advice mechanisms, proper procurement procedures etc., and an effective system of internal checks and balances is being established. It is the duty of the Directors to ensure that each company is managed in accordance with the applicable law and the company's internal rules.

III. Status of the recommendations of the Office of Internal Oversight Services

Recommendation 1: It is recommended that UNMIK cooperate with the Kosovo Government as to the creation of a viable, long-term anti-corruption entity responsible for administrative investigations in the public sector (IV03/365/01).

9. The recommendation has been implemented. As part of its exit strategy, the UNMIK Financial Investigations Unit, a police operation staffed until recently

almost exclusively with officers seconded by the Guardia di Finanza, has added five trainers and is training its first 22 local police officers in financial investigations. The Unit has both administrative and criminal investigative authority, the only agency in Kosovo of its kind.

10. The Office of the Auditor General of Kosovo has, in the past year, become fully operational and active. It is executing an annual plan of audits, and is responding to requests from the Kosovo Assembly and the Provisional Institutions of Self-Government. UNMIK, in consultation with the Auditor General, will focus on operations for appropriate successor bodies in the context of the informal "future arrangements" process.

Recommendation 2: It is recommended that UNMIK monitor the cases referred to the Department of Justice and report to the Department of Peacekeeping Operations and the Task Force on the results of the cases. Furthermore, any cases referred for criminal action that are not the subject of a prosecution action should be addressed via applicable administrative and disciplinary processes (IV03/365/02).

11. The recommendation has been implemented. UNMIK has monitored cases referred to the Department of Justice and will continue to provide the results of the cases to the Department of Peacekeeping Operations. As an UNMIK body, the Investigations Task Force will not be provided with a separate report on these cases.

12. Of the nine cases referred to the Department of Justice at the recommendation of the Task Force, six cases were dismissed, one trial involving airport staff is under way, and two cases remain under active investigation by the Department of Justice. Of the two cases under investigation, one involving the airport apartments has been dismissed against most of the staff concerned. A part remains open. For those airport staff whose criminal cases were dismissed by the Department of Justice, the Board of Directors has decided to take disciplinary and other measures, including the possibility of dismissal and civil action seeking restitution. Most recently the Airport Authority has dismissed two employees and issued warnings to five others.

Recommendation 3: It is recommended that the performance of all managers of Pristina Airport be evaluated in the light of the Task Force investigations (IV03/365/03).

13. The recommendation has been implemented. UNMIK has introduced proper corporate governance, including evaluation of the performance of the management team at Pristina Airport, by establishing a Board of Directors, as it has for other publicly owned enterprises, with responsibilities for oversight and management of the enterprise. With the Board in place, capacity-building has become more transparent and the system of internal checks and balances has become more effective. UNMIK is now able to monitor the performance of the Pristina Airport management through the appointed Board. That Board has an obligation to approve all decisions that might affect the long-term performance of the enterprise and to establish proper internal corporate governance rules, including performance evaluations and management succession. Furthermore, as indicated above, the Airport Board has evaluated the roles of all those implicated in the Task Force reports, determined where there was mismanagement, and taken disciplinary action as appropriate.

Recommendation 4: It is recommended that adequate resources be made available to conduct regular external audits of each of the publicly owned enterprises to assist in improving systems of control and reducing the opportunities for fraudulent activities (IV03/365/04).

14. The recommendation has been implemented. UNMIK confirmed that annual external audits of publicly owned enterprises have been conducted since the financial year 2003. In addition, the Office of the Auditor General of Kosovo has in the past year become fully operational and active. The Auditor General is executing an annual plan of audits, and is responding to requests from the Kosovo Assembly and the Provisional Institutions of Self-Government. UNMIK, in consultation with the Auditor General, will focus on operations for appropriate successor bodies in the context of the informal "future arrangement" process.

Recommendation 5: It is recommended that UNMIK introduce procedures for the regular disclosure of assets by publicly owned enterprise staff, such as senior managers and those working in areas of risk, such as public procurement (IV03/365/05).

15. UNMIK has taken measures to substantially address this issue. Pillar IV of UNMIK is in the process of drafting a code of corporate governance, for adoption by the Board of the Kosovo Trust Agency and applicable to all publicly owned enterprises. The Pillar has been requested to draft a set of rules governing the inner workings of the corporation, including the relationship between Board and management, and the relationship between individual employees and the company. Conflict of interest and disclosure requirements are expected to form part of the final product.

Recommendation 6: It is recommended that the Special Representative of the Secretary-General, together with UNMIK Pillar IV, clarify the rules applicable to the publicly owned enterprises and undertake an awareness-raising programme to ensure clarity for all personnel (IV03/365/06).

16. The recommendation has been implemented through the publicly owned enterprise incorporation process. Each publicly owned enterprise has its specific by-laws and internal procedures, which are known to the management and personnel concerned.

Recommendation 7: It is recommended that UNMIK, through Pillar IV, conduct training for all staff in the publicly owned enterprises on adherence to rules, both financial and administrative, relevant to each of the publicly owned enterprises (IV03/365/07).

17. The recommendation has been implemented. There have been major procedural changes to the management of publicly owned enterprises as a result of the incorporation process in the key areas of procurement, finance and recruitment. The law on public procurement in Kosovo changed in mid-2004 and is strictly applied. It requires that each publicly owned enterprise have on staff someone deemed qualified specifically by the public procurement agency. All publicly owned enterprises now have such individuals on staff. In the other functional areas, policies, in many cases new policies, and their applicability have been made clear to the staff concerned.

Recommendation 8: It is recommended that UNMIK take the actions recommended in the individual Task Force reports in a speedy and effective manner in order to prevent further fraud and corruption risks from materializing to the detriment of Kosovo (IV03/365/08).

18. The recommendation has been implemented to the maximum extent feasible. Procedural issues have been addressed, or are being implemented.

19. In cases of a non-criminal nature, most recommendations fell outside the scope of direct action by UNMIK, that is, the individuals concerned were not UNMIK staff. In November 2005, the Special Representative of the Secretary-General asked the Chairman of the Board of Directors of the Pristina International Airport to review those Task Force reports of a non-criminal nature and determine what actions, if any, could be taken. At its regular meeting of February 2006, the Board established an ad hoc committee of professionals to review the documents. With guidance from the Special Representative's Office for the Oversight of Publicly-owned Enterprises, the Airport Board subsequently decided to take disciplinary action against all those implicated. For current workers, depending on the gravity of the issue and the role of the individual, measures include the issuance of letters of first warning, letters of final warning, and outright dismissal. The Airport Authority has also contacted persons no longer with the airport, including two former General Managers. Furthermore, individuals whose criminal cases have been dismissed will be the subject of an administrative review by the Airport Managing Director to determine whether disciplinary action and/or recourse to civil law remedies is required.

Recommendation 9: It is recommended that UNMIK, in collaboration with the relevant Kosovo authorities, establish and promote the concept of merit-based employment in all public institutions (IV03/365/09).

20. The recommendation has been implemented for the publicly owned enterprises. Recruitment policies have been tightened. Recent high-level recruitments have been fully transparent, public, and highly competitive. This is another aspect of improved corporate governance which has resulted from incorporation and the establishment of a Board of Directors for publicly owned enterprises.

Recommendation 10: It is recommended that UNMIK make contact with the air carriers mentioned [in the OIOS report] in an attempt to determine whether any Pristina Airport officials improperly interfered with the conduct of aviation operations or the scheduling of flights, or whether any person with an official function at the airport sought a bribe in connection with legitimate aviation activities at the airport (IV03/365/10).

21. This recommendation is respectfully not accepted. As acknowledged by OIOS, in attempting to produce evidence in this case, the Task Force was unable to gain any information from the concerned airlines, even with the support of IATA. In view of the fact that so much time has passed since the events occurred in 2001, UNMIK agreed with the airport management that it was not a good use of limited resources to pursue this matter further when the chance of success was considered negligible.

Recommendation 11: It is recommended that the Secretary-General share the [OIOS] report with the Security Council (IV03/365/11).

22. This recommendation is not accepted. This matter is properly one for the General Assembly.

IV. Conclusion

23. The governance environment for enterprises such as the Pristina Airport is vastly different today from the situation pertaining in 2003 when the original Task Force investigations were conducted. The significant reform initiatives instituted by UNMIK to improve governance of publicly owned enterprises offer real hope of reducing the opportunities for mismanagement, fraud and corruption in those enterprises.